



POLICE DEPARTMENT

January 28, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Romano
Tax Registry No. 907189
30 Precinct
Disciplinary Case No. 2011-4819

Police Officer Caroline Gehm
Tax Registry No. 936656
30 Precinct
Disciplinary Case No. 2011-4820

The above-named members of the Department appeared before me on November 12, 2013, and December 17, 2013, charged with the following:

Disciplinary Case No. 2011-4819

1. Said Police Officer John Romano, assigned to the 30th Precinct, while on-duty, on or about January 30, 2010, within the confines of the 30th Precinct, in New York County, did fail and neglect to prepare a Complaint Report (UF-61) relating to an allegation of sexual abuse of a minor. *(As amended)*

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY-GENERAL

2. Said Police Officer John Romano, assigned as indicated in Specification #1, while on-duty, on or about January 30, 2010, within the confines of the 30th Precinct, in New York County, did wrongfully and without just cause fail to immediately prepare a Report of Suspected Child Abuse or Maltreatment (PD 377-154), and notify the State Central Registry, as required.

P.G. 208-36, Page 3, Paragraph 3(d)(2) FAMILY OFFENSES/DOMESTIC VIOLENCE

Disciplinary Case No. 2011-4820

1. Said Police Officer Caroline Gehm, assigned to the 30th Precinct, while on-duty, on or about January 30, 2010, within the confines of the 30th Precinct, in New York County, did fail and neglect to prepare a Complaint Report (UF-61) relating to an allegation of sexual abuse of a minor. *(As amended)*

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY-GENERAL

2. Said Police Officer Caroline Gehm, assigned as indicated in Specification #1, while on-duty, on or about January 30, 2010, within the confines of the 30th Precinct, in New York County, did wrongfully and without just cause fail to immediately prepare a Report of Suspected Child Abuse or Maltreatment (PD 377-154), and notify the State Central Registry, as required.

P.G. 208-36, Page 3, Paragraph 3(d)(2) – FAMILY OFFENSES/DOMESTIC VIOLENCE

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondents Romano and Gehm were represented by John Tynan, Esq.

Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2011-4819

Respondent Romano is found Not Guilty of Specification No. 1 and Guilty in Part of Specification No. 2.

Disciplinary Case No. 2011-4820

Respondent Gehm is found Not Guilty of Specification No. 1 and Guilty in Part of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant James McGrath and Sergeant Sharisse Sanders.

Lieutenant James McGrath

McGrath, a member of the Department for 26 and one-half years, is presently assigned to the Manhattan North Investigations Unit, where he supervises internal investigations of misconduct. Before his assignment at Manhattan North Investigations, he was the Integrity Control Officer at the 25 Precinct for about 10 years.

McGrath testified that there came a time when he was involved in the investigation of Respondents, Lieutenant Luis Lopez and Sergeant Sharisse Sanders, for failure to take police action on January 30, 2010, in a case involving suspected child abuse of a three-year-old girl by her 13-year-old brother, who will be referred to herein as "J.V." The Department became aware of the allegation of misconduct when the father of the three-year-old girl, Person A, subsequently took the girl to Columbia-Presbyterian Hospital, which notified the Department's Child Abuse Squad.

Person A spoke with Manhattan North Investigations and said that he called 911 on January 30, 2010, to report the incident of abuse. He said that he told the officers who arrived at the scene, which was [REDACTED] in Manhattan, that J. [REDACTED] had been hiding in a closet with his three-year-old sister and several younger female relatives, when [REDACTED] was observed touching the three-year-old girl's vagina and breasts "under the clothing."

Person A said that he pleaded with the officers not to arrest his son. He told the officers that he wanted his son to receive help. Respondent Romano said that he would confer with a detective and called a supervisor. No arrest of [REDACTED] was made on January 30, 2010, but [REDACTED] was subsequently arrested by Detective Hernandez of the Child Abuse Squad and was prosecuted in Family Court. McGrath testified that through his investigation, he learned that [REDACTED] pled to “two counts of sexual abuse [in the] second degree.”

McGrath further testified that during his investigation, he learned that a notification to the New York State Central Registry (“the State Registry”) was made the day after the incident on January 31, 2010, at about 7:00 p.m. Respondents were both working a 4:00 p.m. to 12:00 a.m. tour on January 30, 2010 and on January 31, 2010.

Respondent Gehm prepared a Report of Suspected Child Abuse or Maltreatment, a Department form (PD 377-154), on January 31, 2010, at about 6:23 p.m. (Department’s Exhibit [DX] 1). An entry was also made in the telephone message log (DX 2), which showed that on January 31, 2010, at about 7:00 p.m., Respondent Romano notified the State Registry of this incident.

The first page of the Intake Report from the Office of Children and Family Services – Child Protective Services (DX 3), an eight-page document regarding this incident, confirmed that the report was made on January 31, 2010, at about 7:00 p.m. The second page confirmed that the reporter was Respondent Romano. McGrath testified that his investigation determined that Respondents committed misconduct in that they failed to make the notification to the State Registry in a timely manner. The Patrol

Guide, McGrath said, requires a member of the service to notify the State Registry in a prompt fashion.

McGrath testified that on January 30, 2010, Respondents responded to [REDACTED] [REDACTED] regarding this incident at about 10:00 p.m. to 10:30 p.m. McGrath further testified that a determination was made that notification of the State Registry on January 31, 2010, at about 7:00 p.m. "was not immediate or timely," in that it was a day later. A determination was also made that Respondents did not prepare a Complaint Report, commonly known as a UF-61. Patrol Guide § 215-03 directs members of service to prepare a UF-61 in investigations of suspected child abuse. McGrath testified that the purpose of the UF-61 is to document crimes and violations. Once the UF-61 is prepared but an arrest is not made, the matter should be referred to the detective squad or Special Victims Squad.

On further questioning, McGrath testified that the report from Columbia-Presbyterian Hospital was dated February 1, 2010.

On cross-examination, McGrath testified that he substantiated the allegations of misconduct against Lopez for failure to supervise and Lopez was served with charges, but McGrath did not know if Lopez had been penalized because "he is very sick." McGrath did not believe that the charges against Lopez had been resolved. McGrath testified that Sanders was also charged with misconduct for failure to supervise.

McGrath admitted that Respondent Romano did call the Special Victims Squad for advice on the night of the incident, as he was required to do. McGrath was not aware of Sanders speaking with anyone in the Special Victims Squad. McGrath did not believe Sanders spoke with anyone in the detective squad either. According to McGrath,

Detective Hernandez of the Special Victims Squad told Respondent Romano to make a summary arrest. McGrath admitted that for Respondents to make a summary arrest, they would generally need the approval of the sergeant on the scene.

McGrath believed that "the story" of what happened to the three-year-old girl changed by the time Sanders and Lopez were given the information. McGrath believed that Person A told Respondents that the three-year-old girl "was touched under her clothes" but by the time the supervisor arrived on the scene, "it was essentially described as one touch over her clothes, over her diaper, not really intentional." McGrath conceded that he did not know what Person A told Respondents on the night of the incident.

McGrath was not aware of the fact that Respondent Romano called the 30 Precinct Detective Squad ("the detective squad") the night of the incident. McGrath never spoke to anyone in the detective squad to see if Respondent Romano called them seeking advice about the incident. McGrath was not present at Respondent Romano's official Department interview. McGrath did not know if the previous investigator assigned to this case contacted the detective squad to determine if Respondent Romano called them about the incident before calling the Special Victims Squad.

McGrath testified that he did not know what Person A told the Child Abuse Squad as he was not present for the interview. McGrath testified that the Patrol Guide does not specify that prompt notification means by the end of tour or within 24 hours and it does not have any time other than prompt. McGrath testified that Respondents had taken down enough information to notify the State Registry the following day.

Looking at the Report of Suspected Child Abuse or Maltreatment (DX 1), McGrath testified that Respondent Gehm had written "JV Report and DIR prepared."

McGrath was not aware that a youth officer, Luis Hermenegildo, was working at the 30 Precinct. McGrath did not speak with the youth officers to determine if they had seen or handled the Juvenile Report prepared by Respondent Gehm with respect to this incident. McGrath testified that his knowledge of this case against Respondents came from reading the investigative file and sitting in on the interviews of Lopez and Sanders. He was not present for the interviews of Respondents. Respondents were charged with misconduct first and several months later, the supervisors, Sanders and Lopez, were charged with misconduct. McGrath admitted that he had no idea what steps were taken to locate the Juvenile Report.

On re-direct examination, McGrath testified that the assigned investigator to this case was Sergeant Yvette Camarena, who has since retired. McGrath reviewed the investigative file, which is in his custody, but he did not believe he took any additional investigative steps after she left.

Sergeant Sharisse Sanders

Sanders, an eleven-year member of the Department, has been assigned to the 30 Precinct since 2008. On January 30, 2010, she was working a 2:50 p.m. to 11:47 p.m. tour as a patrol supervisor, when at about 10:00 p.m., while she was at the stationhouse, she was ordered by Lieutenant Lopez to respond to a job regarding child abuse at [REDACTED] [REDACTED] to assess the situation.

She arrived at the location in a marked RMP with Police Officer Alvin Pizarro as her driver. She met with Respondents, who were at the scene. Respondent Romano told her that there was a three-year-old girl who had been touched inappropriately by her older

brother [REDACTED] while they were playing in a closet. Sanders testified that Respondent Romano, as well as the father Person A, told her that the contact was not to the skin but to the clothing. Person A had been concerned, so he called the police "because he didn't know what to do."

Sanders testified that she learned [REDACTED] was 14 years old and that he visited Person A during the weekends and stayed with his mother during the week. The day of the incident, January 30, 2010, was a Saturday, and Person A told Sanders that he had picked up [REDACTED] from his mother on Friday and had taken [REDACTED] to his doctor. The doctor had changed [REDACTED]'s dosage of medication and Person A noticed behavioral changes in his son. Sanders obtained permission from Person A to speak with [REDACTED] and based upon her own observation, "realized that there might have been something, you know, wrong with the kid." [REDACTED] did not maintain eye contact, kept his head down during the entire interview, was unresponsive and did not communicate. Sanders thought that [REDACTED] "looked like he might have had some type of, you know, condition."

To prevent any further problems, Sanders directed Respondents, as well as Person A, to remove [REDACTED] from the residence and to return him to the "mother so that there would be no further incidents that night." In addition, Person A told Sanders that they would take [REDACTED] to his doctor on Monday morning with respect to the dosage of his medication.

In addition to Person A and [REDACTED], Sanders observed other individuals inside the residence. She saw a few children and a few women, none of whom spoke English, so there was a language barrier. Sanders did not have an opportunity to speak with any of

the other individuals inside the residence. Sanders did not interview any of the children who were inside the closet with [REDACTED] and the three year-old girl.

After assessing the situation, Sanders called Lieutenant Lopez and told him that in her opinion, "it did not seem as though we had enough to make an arrest." Respondent Romano had told Sanders that they had already contacted the Special Victims Squad, which had said that they would not be responding to the job. Sanders explained to Lopez her course of action, which was to complete a Domestic Incident Report (DIR), an Aided Report for the child, a Juvenile Report, an Administration for Children's Services (ACS) report, and her directive to Person A to remove [REDACTED] from the residence and take him back to his mother. Lopez agreed that was the proper action to take.

After her conversation with Lopez, Sanders gave the same directions to Respondents and left the scene. She went back to the stationhouse as it was the end of her tour and she had to go home. After leaving the scene, Sanders did not speak with or see Respondents again that night. She did not see Lopez when she returned to the stationhouse because his tour ended before hers.

Before she ended her tour, Sanders did not ensure that Respondents completed the reports she had ordered because she was the patrol supervisor and her duties dealt with "anything that happen[ed] out in the street in regards to patrol." Sanders testified that it was the desk officer's responsibility to ensure that all the necessary paperwork was prepared.

Sanders did not work on January 31, 2010, as it was her regular day off. Sanders testified that a member of service is required to make a notification to the State Registry about suspected child abuse immediately, "at your first given opportunity. If you are in

the street and you realize it has to be done, you are allowed to go into the stationhouse and make the notification." Sanders discovered later, when she came back to work, that Respondents had made the notification on the following day, which in her experience and supervisory capacity was not considered timely.

As a result of this incident, Sanders was served with charges and specifications for misconduct and she pled guilty to failing to supervise other members of the service under her supervision in that she failed "to ensure that all proper notifications were made and that all witnesses were interviewed in regards to an incident wherein a 13 year old sexually abused his three-year-old sibling." She also had an unrelated case, on the date that she pled guilty, and she was penalized a total of 35 days, which was the penalty for the combination of both incidents.

On cross-examination, Sanders testified that the desk officer, and not she, had the authority to give Respondents permission to stay on overtime to finish all the paperwork in the case.

Sanders testified that during her career, she did not recall if she had handled a sex abuse case in the past. Before sending her out to the location, Lopez spoke with Respondents but Sanders did not know whether he spoke with anyone in the Legal Bureau or the Special Victims Squad. Sanders could not remember Lopez's exact words before sending her out to the scene; he told her to respond to the scene and assess the situation. He told her that it had something to do with a child.

Sanders testified that as a patrol supervisor, she was automatically dispatched to "jobs involving weapons, emergencies, serious crimes and burglaries." Sanders testified

that she would not automatically be dispatched to the sexual abuse of a three-year-old child.

When Sanders arrived at the residence, she did not recall how many children or adults were present. Sanders admitted that she did not speak with any witness to the incident. She admitted that Person A did not witness the incident. She admitted that she did not speak Spanish, and that even though her driver spoke Spanish, she did not ask him to speak with any of the non-English speaking individuals in the apartment to find out what happened.

Sanders spoke with Person A in English. She did not believe that she failed to properly investigate by not speaking to the non-English speaking individuals present. Although the names of the individuals who were present in the apartment were disclosed on the ACS report, she admitted that she did not obtain the information.

Person A told Sanders that [REDACTED] spoke English, so Sanders attempted to interview him in English, but [REDACTED] did not answer any of her questions. Person A told Sanders that he did not witness the incident, but Sanders did not ask him who told him about the incident. Sanders testified that she was not told that a 17-year-old witnessed the incident. Sanders admitted that she only spoke with Person A because he called 911 and that she did not speak with any other civilian individuals. As a patrol supervisor, Sanders had the authority to call for an interpreter but she did not. EMS was present at the scene, although she did not request one.

When Sanders spoke with Lopez, she told him why she did not think there should be an arrest. Lopez told Sanders about the classifications of sexual abuse and the

elements of sexual gratification and skin-to-skin contact. Sanders testified that "we didn't have that, and so he agreed that there was no arrest to be made."

Sanders testified that Respondent Romano told her that he had called the Special Victims Squad but no one had responded and "it would have been their arrest if they did respond." Sanders did not believe that [REDACTED] had committed a crime at that time because of the information that she received. Sanders thought removing [REDACTED] from the location was a good response to the situation. The decision not to make an arrest was made by Sanders and Lopez.

Sanders told Respondents to prepare all the necessary paperwork and she remembered telling them to prepare the DIR, the Aided Report, the ACS report and the Juvenile Report. She also recalled telling Respondents to make sure [REDACTED] left the residence. Sanders believed that the evidence did not support making an arrest. The information that Sanders obtained on the night of the incident came from both Person A and Respondents. Sanders testified that she now works the day tours and is no longer Respondents' supervisor.

Respondents' Case

Respondents testified in their own behalf.

Respondent Caroline Gehm

Respondent Gehm, an eight-year member of the Department, is presently assigned to the 30 Precinct. Her partner on patrol for the past six years has been Respondent

Romano. From the time she was assigned to the 30 Precinct until January 30, 2010, she had made or assisted in making about 50 arrests.

On January 30, 2010, Respondent Gehm was working the 4:00 p.m. to 12:00 a.m. tour and she was in uniform and on patrol. While on patrol, she and Respondent Romano received a radio transmission to respond to a “past sexual assault” at [REDACTED], a building within the sector that Respondents normally patrol. When they arrived at the location at about 10:30 p.m., she could not recall whether EMS had already arrived. Respondents entered the building and went to the apartment in question, where they met Person A, the father who had made the 911 call. Inside the apartment were his wife, his 13-year old son [REDACTED], his three-year-old daughter (referred to herein as “[REDACTED].”), another 14- to 15-year-old daughter, as well as “a bunch of kids.”

Person A told Respondent Gehm that the children had been hiding in a closet in one of the bedrooms when [REDACTED] touched the crotch area of [REDACTED], while she was wearing her underwear or some kind of shorts. The other children saw what [REDACTED] did and told Person A, who called 911. Respondent Gehm took the pedigree information of Person A and his wife, who did not speak English and spoke Spanish, and the children. Respondents do not speak Spanish. No one in the apartment was agitated or emotional.

After taking the pedigree information, Respondent Gehm started the DIR while Respondent Romano called “numerous other parts of the Department,” such as the Special Victims Squad, which members of service are required to notify in a suspected child abuse case, and the 30 Precinct Detective Squad. In the meantime, Respondent Gehm was completing the forms and waiting for Respondent Romano to finish his calls.

Person A told Respondent Gehm that [REDACTED] had [REDACTED] and had switched medication, which Person A did not believe was working. Respondent Gehm did not make any recommendations as to what Person A should do. In the meantime, Respondent Romano conferred with the detective squad and Lopez, and about half an hour later, Sanders and her driver arrived at the scene.

Sanders spoke with Respondent Romano and Person A, while Respondent Gehm was in the living room with the children and the wife. No one approached Respondent Gehm to voice any concerns about what had happened. Respondent Gehm remained in the living room for about 15 minutes, at which point Sanders told Respondents to prepare a DIR and a Juvenile Report. Sanders did not mention filing a Report of Suspected Child Abuse or Maltreatment.

Respondent Romano told Respondent Gehm about his conversations with the detective squad and the Special Victims Squad, in that he was told that if it was skin-on-skin contact, there must be an arrest, and “that anything else it’s up to the precinct to decide what we wanted to do.” Respondent Gehm did not speak with the Special Victims Squad or with the detective squad.

Respondent Gehm finished the DIR and had Person A write and sign a statement. Respondents then went back to the command and Respondent Gehm finished the Juvenile Report. She “handed in the paperwork to the desk, the basket that the paperwork goes in.” There was no other paperwork that she had to do with respect to the incident.

Respondent Gehm believed that [REDACTED] was taken away from the location by Person A and returned to his mother’s home. EMS did not remove [REDACTED] from the scene. Respondent did not recall Sanders telling her to separate [REDACTED] from the other children.

When Respondent Gehm returned to the stationhouse, she was not approached by Sanders and was not told to do any additional paperwork. Respondent Gehm did not see Sanders at the stationhouse at all. Sanders did not scratch Respondent Gehm's Activity Log while she was at the location. Respondent Gehm ended her tour at 12:35 a.m., so she worked an additional hour.

Respondent Gehm worked the 4:00 p.m. to 12:00 a.m. tour the following day, January 31, 2010. At about 6:00 p.m., she and Respondent Romano were told to return to the command, whereupon Sergeant Buonadonna, the domestic violence sergeant who had reviewed the DIR, told Respondents to call ACS and complete the Report of Suspected Child Abuse or Maltreatment, which they did. The night before, Sanders never told Respondents to complete the report of suspected child abuse form and Sanders never told Respondents to contact ACS. Sanders' instructions to Respondents the night before were to "prepare a DIR and a juvenile report."

On cross-examination, Respondent Gehm confirmed that she prepared the Report of Suspected Child Abuse or Maltreatment (DX 1) on January 31, 2010, at about 6:53 p.m., several hours into her tour. Buonadonna had reviewed all the DIRs from the previous day and told Respondents to prepare that report because he said that it sounded like a case where ACS should be notified. Buonadonna was not present on January 30, 2010.

Respondent Gehm confirmed that Sanders never told her to prepare a Report of Suspected Child Abuse or Maltreatment and only told her to prepare the DIR and Juvenile Report, which Respondent testified that she did. Respondent confirmed that on the Report of Suspected Child Abuse or Maltreatment that she prepared (DX 1), the

sections referring to a complaint, a complaint number and precinct were left blank.

Respondent confirmed that although [REDACTED] was not arrested on the night of the incident, the section on the report that asked whether or not there was an arrest was left blank.

Respondent Gehm explained that the complaint number or juvenile number on the report would not be generated by her:

My scratch copy would go into a bin, and then it would be inputted by the juvenile officer or a PAA (Police Administrative Aide) who puts in complaint reports, and I wouldn't, I wouldn't go back and find my form and then write that information in. Generally it would be written in for me.

Respondent Gehm confirmed that she prepared the complaint report on the night of the incident and that she did not speak with the PAA afterwards to find out if a complaint number had been generated.

On re-direct examination, Respondent Gehm testified that a "61 report or juvenile report" is drafted in handwritten form and the process by which it is entered into a computer database is that it is forwarded to the Domestic Violence Unit and youth officer, who usually work the second platoon assignment, which is the day tour. Only after the information is placed in the computer database is a complaint number generated. Respondent Gehm testified that it is often the case that UF-61s done near the end of the tour are not signed off until the next day. Respondent also testified that if information on a UF-61 is missing, the domestic violence officer or the youth officer contacts the officer to verify or to fix the problem before the supervisor signs off on it. Respondent confirmed that when a supervisor signs off on a complaint report, it means that "they verified the information and that it's ready to be put into the computer."

Respondent John Romano

Respondent Romano, an almost 20-year member of the Department, is presently and has been for the past 18 years, assigned to the 30 Precinct. His partner on patrol for the past six years has been Respondent Gehm. During his career, he has personally made about 200 arrests and assisted in hundreds of others.

On January 30, 2010, he was working the 4:00 p.m. to 12:00 a.m. tour and was on patrol. Sanders, assigned to the 30 Precinct for "maybe a year, year-and-a-half," was the patrol supervisor that evening. There came a time during the tour when Respondents received a radio transmission of a "past sexual assault" at [REDACTED].

When Respondents arrived at the scene at about 10:30 p.m., no other responders were there. Respondents did not call for back-up. Respondents were voluntarily allowed into the apartment, where they were met by Person A, who told Respondent Romano that his two daughters were inside a closet, playing games, when they saw [REDACTED] touch another sister in the groin area "with underwear on." When his daughters told him what happened, Person A called 911.

Respondent Romano observed the apartment to be very clean. There were "a couple of females" in the apartment with different ranges of age. [REDACTED], who was "a little nervous and uneasy," was also in the apartment, along with Person A's wife, who did not speak English. Person A's English, on the other hand, was "very good." Person A told Respondent that he called 911 because he wanted help for his son [REDACTED], who was taking medication "for [REDACTED] and [REDACTED] or something like that." The medication had very recently been changed, and Person A said "maybe it wasn't strong enough for him."

Because the radio transmission involved a sexual matter, before arriving at the location, Respondent had called “central just to get more info on what we were going to.” He was told that it was a past sexual assault between a brother and a sister, so he knew that he need not search for anyone “running around the building.” After speaking with Person A, Respondent Romano called the detective squad’s direct line using his cell phone and he spoke with a detective, whose name he did not recall, about the situation. The detective told Respondent to call the Special Victims Squad.

Respondent Romano then called the Special Victims Squad and spoke with Detective Santos, who told Respondent that “with the age of the girl, the child abuse detectives would take that kind of a case.” So, Respondent called the Child Abuse Squad and spoke with Detective Hernandez about his conversation with Person A. Hernandez told Respondent that “if it was skin on skin, it was a must arrest. I said the underwear were on as per the father. He [Hernandez] says since you guys are there, you guys basically run with it, he said.” Respondent Romano understood “run with it” to mean that Hernandez was “probably busy and for us to handle it.” Respondent Romano then called the detective squad again to let them know about his conversations with the other two units in the Department. Respondent Romano could not recall his conversation with the detective squad but afterwards, he called Lopez, the commander for the third platoon at his precinct.

Lopez told Respondent Romano that he was sending Sanders to the scene to evaluate the situation. Respondent testified that he believed he called the desk to see if Sanders was on her way, and he did not recall if he spoke with Sanders at the desk or if there was a radio transmission for Sanders to come to the scene, but Sanders eventually

arrived. EMS also arrived but Respondent Romano did not recall if EMS arrived before Sanders.

Respondent Romano told Sanders about his conversations with Person A and the other units. Sanders then spoke with Person A for about 15 minutes. Respondent Romano was present for a "little bit" of the conversation between Sanders and Person A; the rest of the time, he was in the living room. Respondent Romano saw Sanders on her cell phone after she spoke with Person A. Subsequently, Sanders told Respondents to prepare a DIR and a Juvenile Report and then Sanders left. Respondent Romano was prepared to make an arrest, if need be, and did not have an objection to making an arrest, but Sanders simply told them to prepare a DIR and a Juvenile Report.

Respondent Romano testified that he normally carries blank copies of police documents, such as a UF-61, a domestic violence report, and an aided card, while on patrol. Respondent Romano also testified that Respondent Gehm carries a lot of paperwork with her. On the night of the incident, Respondent Romaono saw Respondent Gehm prepare the Juvenile Report in the apartment. He was sitting next to her in the living room as she was preparing the report.

Respondent Romano testified that on the night of the incident, he closed out the job at 12:15 a.m. He made notations in his Activity Log of "DIR plus juve done," which meant that Respondents prepared both the DIR and the Juvenile Report. Respondent Romano testified that at the end of the job, "we gave it back" as 93F, which meant that both the DIR and the Juvenile Report were prepared. If only the DIR had been prepared, then Respondents would have given the job back as 90 F1. Respondent Romano testified

that the Juvenile Report is "really a 61, a complaint report, and you just mark off juvenile on top."

Once the reports were completed, they were placed in different baskets on the desk at the precinct. Respondent Romano said he did not recall if there was a basket specifically for Juvenile Reports "because sometimes you just leave it at the desk in the 61 pile, in the complaint file, then they stick it in the everything drawer." Normally, the administrative work of entering the information in the reports into the computer database is done during the day tour, the second platoon assignment.

Before he left the stationhouse the night of the incident, Respondent Romano did not see Sanders or Lopez. While at the command and before he went end of tour, Respondent Romano was not told to make any other notifications and he was not told to do any additional work.

The following day, January 31, 2010, Respondents worked the 4:00 p.m. to 12:00 a.m. tour, and at about 6:00 p.m., they were notified to return to the command, where they were met by Buonadonna, who asked them about the incident the night before. Upon being informed, Buonadonna told Respondents to prepare the Report of Suspected Child Abuse or Maltreatment, which Respondents did immediately and they also notified the State Registry. Not Sanders, nor the Child Abuse Squad, nor the Special Victims Squad, nor the detective squad ever told Respondent Romano that he should file those reports.

Although they later searched for the Juvenile Report, Respondents were not able to find it. A "couple of months" after the incident, they were able to locate the DIR, in

that it "was buried in another month." Numerous supervisors had access to these reports once they were done.

On cross-examination, Respondent Romano testified that Respondent Gehm prepared the DIR while inside the Person A household on January 30, 2010, and admitted that they did not notify the State Registry until the following day at about 7:00 p.m.

Looking at the DIR prepared by Respondent Gehm on January 30, 2010 (DX 4), Respondent Romano testified that the State Registry had not been notified when Respondent Gehm prepared the report; however, after Buonadonna accessed the DIR on January 31, 2010 and asked Respondents to notify the State Registry, Respondent Romano added a handwritten line on the DIR that the State Registry had been notified.

Page 2 of the DIR (DX 4) is a handwritten "Statement of Allegations/Supporting Deposition" signed by Person A under the penalty of perjury and dated January 30, 2010. In the handwritten portion of the statement, Person A states:

I Person A am aware that [] is under medication for ADD & observed him touching my 3 yrs old daughter on her private part. I will seek the help of a psychiatrist to evaluate [] for his behavior, My daughter had short pants on & there was no skin to skin contact.

Respondent Romano repeatedly testified that the Juvenile Report, UF-61, was prepared by Respondent Gehm, that he was present when she prepared it and "it went to the desk" at the stationhouse.

Respondent Romano testified that Sanders never told them to notify the State Registry on January 30, 2010. He acknowledged that he has prepared Reports of Suspected Child Abuse or Maltreatment in the past.

On re-direct examination, Respondent Romano testified that the DIR and the Juvenile Report (UF-61) were completed in handwritten form on January 30, 2010. He testified that it is the custom of the Department for supervisors to show the officers the reports if there are mistakes or omissions in them, which is what Buonadonna did here on January 31, 2010, with the DIR because it did not have a central registry number, which was added after the State Registry was notified.

Upon further questioning, Respondent Romano testified that the Juvenile Report is the equivalent of a UF-61 and that he mentioned it in his Activity Log at 12:15 a.m., which states, "0015 hours, 93F, DIR and juve done." A copy of that entry in Respondent Romano's Activity Log was admitted into evidence (Court Exhibit 3).

FINDINGS AND ANALYSIS

While there are several issues in dispute, which I will address, the basic facts of this case are not in question. On Saturday, January 30, 2010, Respondents, while on patrol in the 30 Precinct, at about 10:00 p.m., received a radio run of a past sexual assault. When they arrived at the apartment, they were advised by Person A that his 13- year-old son, [REDACTED], had touched his three-year old daughter, [REDACTED], in the vaginal area. On further discussion of the matter, they learned that the younger child had underwear on at the time. Person A also advised Respondents that his son had some kind of mental condition and was on medication. Further, they were informed that the medication had recently been changed and the father opined that the new medication might not be strong enough.

The officers, not knowing what to do, reached out for help. Respondent Romano made the calls. He called the 30 Precinct Detective Squad, which referred him to the Special Victims Squad. He called the Special Victims Squad, which referred him to the Child Abuse Squad. He called the Child Abuse Squad where he spoke to Detective Hernandez who, Respondent Romano testified, told them if there was skin on skin contact it was a “must arrest.” This was not “skin on skin” and according to Respondent Romano, he was told to “run with it,” which he reasonably took to mean that he should make his own decision. He then called the precinct detective squad again to advise them of what had occurred. Following that call, he consulted with the platoon commander, Lieutenant Lopez. The lieutenant told him to call the patrol supervisor, Sergeant Sanders, to the scene. Sanders came to the scene.

Sanders interviewed the father, Person A, assessed the situation and determined that no arrest was warranted as the contact was through clothing. She also arranged to separate the children, with [REDACTED] going with his mother and the three-year-old daughter staying with the father. Sanders also directed Respondents to prepare a Juvenile Report, and a DIR.¹ She then went end of tour noting that she was not permitted overtime. Sanders was not at work the next day, which was her regular day off.

On that next day, Sunday, January 31, 2010, Respondents again worked a 4:00 p.m. to 12:00 a.m. tour. At about 6:00 p.m., Buonadonna, the domestic violence sergeant, called them back to the precinct. He had reviewed the DIR that they had submitted and based on his reading of that report, directed them to file a Report of Suspected Child Abuse or Maltreatment (PD 377-154) and notify the State Central

¹ She also claimed to have directed Respondents to prepare an ACS report, another matter in dispute, which I will discuss later in this decision.

Registry, which they did. Respondent Romano said he amended the DIR to reflect the notification.

On Monday, February 1, 2010, Person A took his daughter to the hospital. Based on what Person A reported to the hospital, a report was made by the hospital to the Department. Detective Hernandez, of the Child Abuse Squad, responded. [REDACTED] was arrested and prosecuted in Family Court.

At this point, the Department began an investigation to see why an arrest had not been made based on the radio run of January 30, 2010.

This then brings us to Specification No. 1 and the first contested fact which I will address. Specification No. 1² alleges that Respondents failed to complete a UF-61 in relation to the sexual abuse of a minor. In fact, Sanders told them to prepare a Juvenile Report. The terms Juvenile Report and UF-61 have been used interchangeably during this proceeding.

Respondent Romano claimed that he saw Respondent Gehm prepare the Juvenile Report while they were in the apartment. He noted the existence of the report in his Activity Log. Respondent Gehm testified that in the ordinary course of business, a rough draft of the report would be placed in a bin in the precinct and would be assigned a number and entered into the computer later by a PAA. She said she dropped the rough draft of the report in the bin.

The Department claims that no such Juvenile Report was located and that this is proof that Respondent never prepared that report.

² The Respondents are charged in separate dockets; however, the specifications in both the original and amended charges for each Respondent are identical. To simplify matters, I refer herein to each specification in the singular, but it should be noted that I am addressing the duplicate specifications as they exist as to each Respondent.

As the facts make clear, Respondents did not ignore this radio run. They obviously spent a good deal of time and energy in trying to determine what to do in this situation. I see no reason to reject the claim by Respondents that they completed a report. In addition, in what appears to be a contemporaneous writing, Respondent Romano's Activity Log reflects the existence of the report when he noted that a "juve" had been prepared. Indeed, a page of Respondent Romano's Activity Log is in evidence (Court Exhibit 3) and appears to be quite comprehensive. In addition to noting the issuance of the DIR and Juvenile Report, the entry for "0015 hours" indicates that the job was marked 93F, further confirmation that they had prepared that report.

On the other side of the coin, the evidence the Department offered to establish that the report did not exist is inadequate. To be sure, proving a negative is always a difficult task but the alleged proof here comes nowhere close to establishing the claimed failure as a fact. The only witness the Department produced on this issue was McGrath. McGrath inherited the investigation and his testimony on this issue was essentially that an investigation had been conducted and the document could not be located.

There is no doubt that the Department's effort was hampered by the fact that the investigator on the case has since retired, but that does not excuse the fact that no evidence was presented as to what efforts were made during this investigation to find the document. McGrath himself apparently made no effort to find the document and relied on the prior investigation. No report outlining the specific investigative steps taken was offered into evidence. On cross-examination, the extent of McGrath's lack of information became clear as he could not say if individuals who might have picked the

document out of the bin had been questioned. Indeed, McGrath admitted that he had no idea what steps were taken to locate the Juvenile Report.

The Department has failed to meet its burden of proving that the Respondents are not telling the truth and that they did not prepare the UF-61.

There are other issues related to this specification, which for the sake of completeness merit comment. Looking at the original Specification No. 1 and at the present Specification No. 1, it is clear that they are not the same. The original Specification No. 1 alleged that Respondents "did wrongfully and without just cause fail to effect the arrest of Mr. [REDACTED] for the sexual abuse of his three (3) year-old sibling."³

The current charges which are denoted as "amended" are dated November 8, 2012, and were apparently served the next day. As has been discussed, the current Specification No. 1 merely claims that Respondents failed to file a UF-61 and makes no mention of a failure to make an arrest. It is clear that the real nature of what occurred when these amended charges were served in November, 2012 is that the Department dismissed the original Specification No. 1 and abandoned that theory of the case. The Department then filed a new specification charging something somewhat different.

In regard to the original Specification No. 1, it should be noted that McGrath did testify that Person A originally told Respondents that the touching was direct contact and not through clothing or a diaper. He also testified that Hernandez, the detective from the Child Abuse Squad, said that he had told Respondents to make the arrest.

This testimony came out on cross-examination and was not part of the Department's case in chief. Further, as McGrath did not participate in either of these

³ The original charges appear to have been served in July, 2011.

conversations, he is relying on hearsay or testifying about a conclusion he came to, or both.

Additionally, there is a sworn, handwritten statement by Person A that there was no direct touching of the child as part of the DIR (DX4). Certainly Person A, as the father of both of these children, was conflicted about what to do. It is hardly surprising that he vacillated in his recounting of what occurred between these children.

It is also worth mentioning that there is a problem with the “skin to skin” vs. “through the clothing” analysis that was allegedly put forward to Respondents by Hernandez when they called the Child Abuse Squad. The crime of sexual abuse involves inappropriate “sexual contact.” Sexual contact is defined in Penal Law § 130.00 (3) as:

Any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim as well as the touching of the victim by the actor, *whether directly or through the clothing.* (Emphasis added)

Obviously all of the discussion about “skin to skin” or “through the clothing” ignored the statute and failed to focus on the real issue, which is whether the alleged contact was about “gratifying sexual desire.”

In any event, as the record stands in this case, there is no evidence that Respondents “failed to make an arrest” of the 13-year-old male and that clearly is not the theory of the case that went to trial.

There is a further complication regarding this specification that must be discussed. A UF-61 and a Juvenile Report are really not interchangeable. Ordinarily, the filing of a UF-61 reporting a crime would mandate the arrest of a perpetrator who was on the scene.

On the other hand, the Juvenile Report allows for an arrest to be deferred and the matter forwarded to the Youth Officer.

In an event, based on the testimony before me and the present theory of the case regarding this specification, the Department has failed to meet its burden of proof and Respondents are found Not Guilty of Specification No. 1.

Specification No. 2 alleges a Patrol Guide violation committed by Respondents because they failed to "immediately" complete the Report of Suspected Child Abuse or Maltreatment and notify the State Registry.

Respondents have raised as a defense the fact that they consulted two supervisors in their chain of command: a lieutenant and a sergeant. They note that the sergeant has accepted responsibility for this Patrol Guide failure in that she has pled guilty to a disciplinary matter which included her failure to supervise Respondents. Charges were also prepared against the lieutenant but have not been adjudicated because of his medical status.

This argument merits consideration and indeed takes on greater significance when one considers that Respondents made reasonable attempts to engage investigative units within the Department and received neither help nor direction.

According to Specification No. 2, Respondents are charged with violating Patrol Guide § 208-36, Page 3, Paragraph 3, subdivision (d)(2), which provides that: "If probable cause exists that a crime has been committed against a child, the perpetrator will be arrested, and no DESK APPEARANCE TICKET (PD260-121) or stationhouse bail will be issued."

This, in fact, was the substance of the original Specification No. 1 which, as I have noted, the Department effectively dismissed before the start of this trial.

Looking at Patrol Guide § 208-36, it is apparent that what the Department meant to charge in Specification No. 2 was Paragraph 3, subdivision (d)(1). That paragraph reads as follows:

If a member REASONABLY SUSPECTS a child less than eighteen is abused, neglected or maltreated and continued presence in the household presents an imminent risk to the child's physical or mental health, request the patrol supervisor to respond, prepare REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT (PD377-154), and notify the State Registry as outlined in P.G. 215-03, "*Emergency Removals Or Investigation And Reporting Of Abused Neglected Or Maltreated Children.*" (Emphasis as in original)

The first issue to determine is whether Respondents had "reasonable suspicion" to believe that the three year-old child had been abused. It would appear that the scenario provided by the father was ambiguous. But "reasonable suspicion" is a relatively low standard. The fact that the father had called the matter in to 911 coupled with the fact that there was some issue of touching certainly created "reasonable suspicion."

Once Respondents had that "reasonable suspicion" of child abuse, Patrol Guide § 208-36 instructs them to "request the patrol supervisor to respond." Respondents did that.

This brings us to another one of the contested issues. Sanders testified that she directed Respondents to prepare a DIR, a Juvenile Report and "the ACS report." By her own testimony, Sanders did not direct Respondents to call the State Registry. There is no clarification in the record as to exactly what Sanders meant by the "ACS report." Certainly she could have been referring to the Report of Suspected Child Abuse or

Maltreatment, but the lack of clarity now may have also been a problem on the night of the incident. Respondents agree that Sanders told them to prepare a DIR and the Juvenile Report. They denied that Sanders told them to prepare a Report of Suspected Child Abuse or Maltreatment.

Here again, there is no reason to believe that Respondents were avoiding work in this case. They made numerous calls and attempted to get direction as to how to handle the matter. When, on January 31, 2010, they were instructed to complete that report and call the State Registry, they apparently did so without hesitation or protest. It would appear that had Sanders told them to file the report they would have done so. Consequently, I accept Respondents' testimony that they were not instructed to complete the Report of Suspected Child Abuse or Maltreatment.

However, going back to Patrol Guide § 208-36, in addition to requiring the response of the patrol supervisor it also directs the officer to prepare the Report of Suspected Child Abuse or Maltreatment (PD377-154) "as outlined in Patrol Guide 215-03."

Again, Respondents argue that once the patrol supervisor, Sanders, came on the scene it was up to her to order them to prepare that report.

Patrol Guide § 215-03 is a twelve-page document which deals with a broad range of child abuse issues, most particularly removal of a child from the home of that child's parent or guardian.

However, on page seven, there is a paragraph headed:

REASONABLE SUSPICION OF ABUSE/NEGLECT/MALTREATMENT BUT NO IMMINENT DANGER TO LIFE OR HEALTH OF CHILD. (Emphasis as in original)

This heading seems to address the situation on January 30, 2010, as Sanders had seen to it that the children were separated. The paragraph (number 16) under that heading once again instructs the “uniformed member of the service” to prepare the Report of Suspected Child Abuse or Maltreatment Worksheet and to submit that along with a DIR to the desk officer.

A note following that paragraph makes mention of the State Central Registry but does not mandate a phone call to the hotline. Indeed the only mention of calling the State Central Registry is in paragraph 13 under a heading regarding the responsibilities of the desk officer. Significantly that reporting requirement follows a lengthy discussion of the removal of a child or children from the home which might lead one to believe that only a matter of that seriousness triggers the responsibility to make the call. However, as it applies to paragraph 16, paragraph 18 refers the desk officer back to paragraph 13.

Remarkable as it may seem, given the state laws I will discuss in a moment, there is nothing in the Patrol Guide sections referenced in this specification that requires a police officer to call the State Central Registry.

In his testimony, McGrath stated that what made Respondents’ conduct regarding a call to the State Registry misconduct was that they did not do so “promptly” which he said was specifically required by the Patrol Guide. McGrath further stated that because of this Patrol Guide mandate, the call made by Respondents to the State Registry the next day was not adequate. On that same issue, the specification alleges that Respondents failed to “immediately” make that notification.

Again, remarkably, looking through Patrol Guide procedures 208-36 and 215-03, neither the word "immediately" or "promptly" or any equivalent can be found as it relates to calling the State Registry.

It could be argued that members of the service should know that they must notify the State Registry and do so promptly but Respondents are charged with violating the Patrol Guide and those words do not appear.

More significantly, these words should appear. Ordinarily I do not comment about the Patrol Guide, but in this situation I would be remiss if I did not take note of this issue.

The obligation to report to the State Registry is not just a Patrol Guide issue—it is a matter of New York State law. Social Service Law § 413 is entitled Persons and officials required to report cases of suspected child abuse or maltreatment. The section lists a large number of professionals who come into contact with children and designates them as mandated reporters. Among the professions listed are: "peace officers, police officers, district attorney or assistant district attorney, investigators in the office of a district attorney or other law enforcement official."

Social Service Law § 415 is entitled Reporting procedure. That section reads in pertinent part: "Reports of suspected child abuse or maltreatment made pursuant to this title shall be made immediately by telephone or by telephone facsimile machine...."

As I already noted, the word "immediately" does not appear anywhere in the relevant Patrol Guide sections as it relates to the State Registry.

In addition to the statute itself, the New York State Office of Children and Family Services, the agency charged with supervising the State Registry, maintains a website⁴ which explains that the hotline telephone operates 24 hours a day, seven days a week--something that is not explicitly mentioned in the Patrol Guide.

There is no question that the Patrol Guide, as it must, covers a wide range of enforcement issues related to child abuse, neglect and maltreatment, but the Patrol Guide at a minimum must make clear the obligation that members of the service have under state law.⁵

Going back to Respondents in this case and Specification No. 2 my review of the Patrol Guide, as written, does not support a charge that they failed to call the registry or that they failed to do so immediately.

On the other hand, Patrol Guide 215-03 paragraph 16, did require Respondents to complete the Report of Suspected Child Abuse or Maltreatment even if Sanders did not specifically direct them to.

Here again the Patrol Guide should require that this report be prepared "immediately" but it does not do so. However a reasonable interpretation of Patrol Guide would require that the document be completed no later than the end of tour when Respondents filed the other paperwork, such as the DIR. Further the facts of this case

⁴ <http://www.ocfs.state.ny.us/main/cps/> There is also an office Summary Guide explaining the responsibilities of mandated reporters: <http://www.ocfs.state.ny.us/main/publications/Pub1159.pdf>

⁵ An abstract of relevant sections of the Social Service Law and the Family Court can be found on page 2 of the Report of Suspected Child Abuse or Maltreatment form. The problem here is twofold. First, the information is not in the Patrol Guide. Second, it is entirely possible for an officer to complete the form (page 1) without ever being aware of page 2, which requires no entries. The copy of the Report of Suspected Child Abuse or Maltreatment offered into in this case (DX1), for instance, does not include page 2.

make clear that Respondents did not intend to prepare this report and only did so when instructed to by the domestic violence sergeant.

As a consequence, Respondents are found Guilty of that part of Specification No. 2 which alleges that they failed to immediately prepare the Report of Suspected Child Abuse or Maltreatment.

PENALTY

In order to determine an appropriate penalty, the service record of each Respondent was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Romano was appointed to the Department on February 28, 1994. Respondent Gehm was appointed to the Department on January 10, 2005. Information from each of their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondents have been found guilty of failing to immediately prepare the Report of Suspected Child Abuse or Maltreatment. Respondents made significant effort to determine how to properly handle this situation, and neither the supervisors nor the officers in specialized units they consulted told them to prepare this report or to call the hotline. They may have also received incorrect information on how to assess the case.

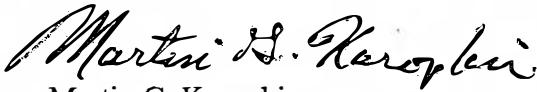
When I asked Respondent Romano about the State Registry hotline, he indicated that he has made such notifications in the past when he was in a home that was in disarray. He said that he did not make the notification in this case because the home seemed to be well cared for. This indicates a serious misunderstanding of the nature, purpose and scope of the hotline and is a clear indication that training on this issue is

necessary, not only on the part of these Respondents but on the part of everyone who was involved in this case (with the notable exception of the domestic violence sergeant, Buonadonna). Respondent Romano further indicated a lack of understanding of the 24-hour nature of this hotline. Also, as I have indicated, the Patrol Guide itself may be inadequate or misleading, and clarification is probably appropriate.

In assessing the penalty, it should be noted that Respondents did prepare a DIR which alerted Buonadonna to the issue, and he directed them to file the Report of Suspected Child Abuse or Maltreatment and call the hotline, which they did.

Imposing a penalty that involves a monetary loss to Respondents under the circumstances of this case would be counterproductive. The Administrative Code, which governs disciplinary penalties, permits the imposition of a Reprimand and I believe that a Reprimand is the appropriate penalty for the failure in this case.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials

APPROVED

MAY 05 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER